SUPREME COURT OF THE UNITED STATES.

No. 109, OCTOBER TERM, 1899.

JAMES BRISTOL, Executor of the Last Will and Testament of Sophia M. Bristol, Deceased,

Plaintiff in Error.

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA,

Defendant in Error.

To the Honorable Supreme Court of the United States:

The undersigned respectfully make the following suggestion and petition for a limited rehearing for the purpose of correcting what we think is an inadvertent error in the order and judgment of this Court in the above entitled cause in that the Court directed lower Court to exclude the taxes for the years 1883 to 1888 inclusive.

While we feel that under the view taken of the case by your Honorable Court, the exclusion should have been only for the years 1883 to 1887 inclusive, and that defendant in error should have judgment for the taxes for the year 1888.

Our suggestion and petition is based upon the statutes of the State of Minnesota. Under the statutes of Minnesota as they existed during the years in question, no answer was allowed to the warrant of distraint nor could that warrant be construed in any manner as the beginning of an action.

We quote the section in question, Section 1567:

"All unpaid personal property taxes shall be deemed delinquent on the 1st day of March, next after they become due * * * On the 1st day of April in each and every year, the County Treasurer shall make a list of all such delinquent personal property taxes which he shall certify to the Clerk of the District Court, and the said Clerk shall immediately issue his warrants to the Sheriff of the County, directing him to proceed to collect the same, and if such taxes are not paid upon demand, said Sheriff shall *distrain* sufficient goods and chattels belonging to the person charged with such taxes, if found within the County."

Section 1568 we do not think necessary to quote at length as there will be no contention; it simply provides for the return of the warrants before the 1st day of June with a list of the uncollected taxes, and the delivery of the list of returned warrants to the Board of County Commissioners at their first session, and their revision of such list as to what in their judgment is collectable. Now, it will be noticed that under Section 1567 the County Treasurer makes the list and certifies the same to the Clerk, who shall immediately issue his warrants and the Sheriff must collect or return the warrants on or before the 1st day of June.

During the years covered by these proceedings the County Board met under statutory provisions on the first Tuesday after the first Monday of January, and the second Monday of July, (Section 667). We hardly think it necessary to quote this section at length as there can be no contention concerning it.

The first meeting of the Board therefore after the return of the uncollected distraint warrants would be on the second Monday of July. Now, Section 1569 provides:

"Within ten days after the adjournment of the Board of Commissioners the Auditor shall file a copy of such revised list with the Clerk of the District Court, and within ten days after the filing of such copy, the Clerk shall issue and deliver to the Sheriff of the County where the person against whom such tax is claimed may at the time reside or be, for service, a citation to each delinquent named on the list, stating the amount of tax and penalty, and requiring such delinquent to appear on the

first day of the *next general term of the District Court* to be held at a time not less than thirty days after the issuance of such citation, and show cause if any there be, why he should not pay such tax and penalty; and if he fails to pay said tax, penalty and cost to the Sheriff before the 1st day of the term, or on said day, to show cause as aforesaid, the Court may direct the Clerk to enter a judgment against such delinquent for the amount of such tax, penalty and cost."

Then the statute enumerates what shall, and what shall not be a defence to the citation and under what circumstances a new citation may be issued.

Section 1570, after providing for the Clerk's fee, provides:

"Execution shall be issued upon such judgment at the request of the County Attorney, and shall state that the judgment was obtained for delinquent personal property taxes and no property shall be exempt from seizure thereon, and such execution may be renewed and re-issued in the same manner as now provided by law upon executions in judgments in civil actions, and all such fees, costs shall be rendered, taxed and made a part of the judgment."

We think it goes without saying that it is the citation issued under Section 1569 which must be issued subsequent to the first Tuesday in July, which is the commencement of the action provided by law for the enforcement of the tax and that no statute of limitations could run prior to that time.

Now, it will be seen that as to the tax of '88, no suit could be commenced until after the 1st day of July, 1889, and the claim was filed in Probate Court on the 18th day of April, 1895, (See printed transcript pg. 23) which would leave less than six years from the time the right of action accrued until the claim was filed, and we think it is only necessary to call the Court's attention to satisfy them that the tax of 1888 is not out-lawed by the Statute of limitations, and should be included in the judgment for the defendant in error.

More than that, Section 5148 of the Statnte of Minnesota reads as follows:

" * * * If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an

action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration."

Now Sophia M. Bristol died on the 11th day of August, 1894, (Pg. 23 printed record) and letters testamentary were issued in Ramsey County, Minnesota, October 19th, 1894, (Pg. 14 printed record) which would take all proceedings against the estate for one year from date out of the statute of limitations, so that in any event, the tax for the year 1888 would not be defeated by the statute of limitations.

We respectfully submit that the order and judgment of this Court should be so amended as to include the tax for the year 1888 in the judgment awarded the defendant in error.

Moses E. Clapp &
George H. Sullivan
Counsel for deft. in error.

We hereby certify that the foregoing petition is in our opinion well founded and not made for the purpose of delay.

Moses E. Clapp
George H. Sullivan